

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

ZELMA BRANTLEY, AS  
ADMINISTRATOR OF THE ESTATE OF  
HORACE ALLENSON BRANTLEY,  
DECEASED, AND IN HER OWN RIGHT

PLAINTIFF

V.

UNITED STATES OF AMERICA

DEFENDANT

CIVIL ACTION

Civil Action No. 2:19-cv-01270-NIQA

**PLAINTIFF'S UNOPPOSED PETITION PURSUANT TO LOCAL RULE 41.2 TO  
APPROVE SETTLEMENT AND DISTRIBUTION OF PROCEEDS**

Petitioner, Zelma Brantley, as Administrator of the Estate of Horace Allenson Brantley, Deceased, and in her own right, by and through their undersigned counsel, Kline & Specter, P.C., respectfully request that this Honorable Court approve the settlement and distribution of the above-captioned action for the compensatory sum of \$1,000,000.00 (\$1 Million), and in support thereof aver as follows:

1. This is a medical malpractice action involving allegations of negligent care and treatment provided to Horace Allenson Brantley. Mr. Brantley was a patient at the Philadelphia VAMC when in December 2015 he had a CT angiogram of the chest which found a 17x13 mm nodule and a 9x9 mm nodule suspicious for malignancy. The nodules required workup and evaluation however no doctor at the Philadelphia VAMC told Mr. Brantley about the nodules or ordered any follow up studies or treatment for more than two years despite repeated opportunities to do so. In the intervening two years the cancer had gone from a treatable Stage I to an incurable Stage

2. Petitioner is the duly appointed Administrator of the Estate of Horace Allenson Brantley, deceased. Letters of Administration were granted to Petitioner on August 5, 2019 by the Commonwealth of Pennsylvania. See Letters of Administration attached hereto as Exhibit "A."

3. Petitioner was the wife of Horace Allenson Brantley an individual who was born on July 31, 1954 and died on July 8, 2019 at 64 years of age. Decedent did not have a will.

4. On December 4, 2019 the parties reached a settlement for \$1,000,000.00.

5. Petitioner's counsel is of the professional opinion that the proposed settlement is fair and reasonable in light of the facts of this case and the applicable law.

6. There is no lien asserted by the Pennsylvania Department of Human Services. Petitioner's counsel has advised the Pennsylvania Department of Human Services ("DHS") of the existence of this case and has received written confirmation that they have no lien on this recovery. *See*, Letter from DHS dated July 31, 2019, attached hereto as Exhibit "B."

7. Horace Brantley was not a Medicare beneficiary. Petitioner's counsel has advised the Centers for Medicare and Medicaid Services ("CMS") of the existence of this case and has received written confirmation that they have no lien on this recovery. *See*, Letter from CMS, dated May 13, 2019, attached hereto as Exhibit "C".

8. A copy of this Petition was forwarded to Carolyn Dymond, Trust Valuation Specialist, Pennsylvania Department of Revenue, Bureau of Individual Taxes Inheritance Division, P.O. Box 280601, Harrisburg, Pennsylvania 17128, via e-mail requesting approval of the allocation recited herein between the wrongful death and survival actions.

9. Horace Allenson Brantley's sole beneficiary under the Wrongful Death Act, 42 Pa. C.S.A. §8301 is as follows:

Zelma Brantley (wife)  
1338 Pennington Road  
Philadelphia, Pennsylvania 19151

10. The costs of litigation, paid in advance by Petitioner's counsel, are \$10,291.88. An itemized breakdown of the legal costs is attached hereto as Exhibit "D". The itemized photocopying, express delivery services, travel, and courier expenses were specific expenses of the litigation and were substantially incurred to provide expert reviewers and witnesses with the materials necessary to formulate their opinions and provide their reviews in a timely manner, and to prepare expert witnesses for trial. The specific costs identified are not attributable to this law firm's general overhead expenses. The expenditure of these costs played an integral role in securing the settlement result achieved in this action.

11. Accordingly, Petitioner's counsel respectfully requests reimbursement of these litigation costs and expenses in the amount \$10,291.88.

12. The fee agreement entered into by and between Petitioner and Kline & Specter, P.C. provided that counsel was to receive twenty-five percent (25%) of the gross recovery plus reimbursement of costs.

13. The attached Verification signed by Plaintiff, Zelma Brantley specifically approves of this settlement and the allocation of proceeds as set forth in this Petition.

14. Accordingly, Petitioner's counsel respectfully requests an attorneys' fee in the amount of \$250,000.00, which represents 25% of the \$1,000,000.00 settlement.

15. The net proceeds of the settlement, after deduction of attorneys' fees, and costs is \$739,708.12.

16. Petitioner requests distribution all of the net proceeds of the settlement, after deduction of costs and attorney fees, as follows:

Wrongful Death Claim	50%
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Survival Claim	50%
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17. Petitioner requests that the net settlement proceeds be distributed as follows:

### Wrongful Death Act Proceeds (50%)

To: Zelma Brantley \$ 369,854.06

### Survival Act Proceeds (50%)

To: Zelma Brantley as Administrator of the  
Estate of Horace Allenson Brantley, deceased \$ 369,854.06

18. In summary, for the reasons set forth above, Petitioner respectfully request that the proposed settlement proceeds of \$1,000,000.00 be approved, allocated and distributed as follows:

<b>GROSS SETTLEMENT AMOUNT</b>	<b>\$1,000,000.00</b>
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a.	Kline & Specter, P.C. (Attorney's fee)	\$ 250,000.00
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b.	Kline & Specter, P.C (Reimbursement of litigation costs)	\$ 10,291.88
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**NET DISTRIBUTION** **\$ 739,708.12**

### Wrongful Death Act Proceeds (50%)

To: Zelma Brantley \$ 369,854.06

### Survival Act Proceeds (50%)

To: Zelma Brantley as Administrator of the  
Estate of Horace Allenson Brantley, deceased \$ 369,854.06

19. This proposed allocation between the Wrongful Death Act claims and Survival Act claims is appropriate because equal elements of damages in this action arise pursuant to the Wrongful Death Act 42.Pa. C.S. §8301 which includes the loss of consortium and the loss of

household services which the decedent would have provided to his wife and the loss of comfort, affection and society suffered by the Plaintiff-Petitioner.

20. The survival action in this matter relates to damages suffered by Mr. Brantley prior to his death. Mr. Brantley suffered from the devastating effects of State IV metastatic lung cancer which eventually resulted in his death.

21. Defense counsel have no opposition to this Petition.

**WHEREFORE**, for all of the foregoing reasons, Petitioner respectfully requests that the Court enter the attached Order approving the settlement and distribution of proceeds of the above-captioned case in the manner set forth herein.

Respectfully submitted,

Date: 12/26/19

BY:   
REGAN S. SAFIER, ESQUIRE  
PA 79919; [regan.safier@klinespecter.com](mailto:regan.safier@klinespecter.com)  
Attorney for Plaintiffs

Kline & Specter, P.C.  
1525 Locust Street, 19<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 772-2460 (Direct)  
(215) 735-0921 (Fax)

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EASTERN DISTRICT OF PENNSYLVANIA

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**VERIFICATION OF PETITIONER IN SUPPORT OF PETITION  
PURSUANT TO LOCAL RULE 41.2 TO APPROVE SETTLEMENT  
AND DISTRIBUTION OF PROCEEDS**

1. I am Petitioner Zelma Brantley, as Administrator of the Estate of Horace Allenson Brantley, Deceased, and in her own right.

2. I am the Plaintiff in the above-captioned action and hereby verify that the statements made in the foregoing Petition are true and correct to the best of my knowledge, information and belief.

3. I am represented by Thomas R. Kline, Esquire, and Regan Safier, Esquire of the law firm of Kline & Specter, P.C.

4. I am completely and totally satisfied with my legal representation in this litigation and I understand this Petition is for approval of the settlement against United States of America.

5. I approve of the settlement of this action in the amount of \$1 million, and the distribution of proceeds, without reservation.

6. I understand the statements made in the Petition are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: 12-11-19

ZELMA BRANTLEY  
Zelma Brantley

**CERTIFICATE OF SERVICE**

I, Regan S. Safier, Esquire, hereby certify that on this date a copy of the foregoing was served upon the following via the Court's Electronic Filing System:

Gerald B. Sullivan, AUSA  
Paul J. Koob, AUSA  
U.S. Attorney's Office  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

**KLINE & SPECTER, P.C.**

Date: \_\_\_\_\_

12/26/19

By: \_\_\_\_\_

  
REGAN S. SAFIER, ESQUIRE  
Attorneys for Plaintiff

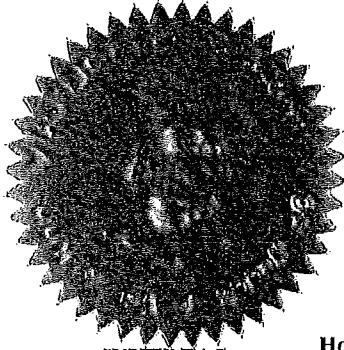


# EXHIBIT A

LETTERS OF ADMINISTRATION

REGISTER'S OFFICE  
PHILADELPHIA COUNTY, PA

Nº A3334-2019



ESTATE OF Horace A Brantley

Social Security No. 058-46-4893

WHEREAS, Horace A Brantley  
late of 1338 Pennington Road, PHILADELPHIA, PA 19151

died on the 8th day of July, 2019;  
and

WHEREAS, the grant of letters of administration is required for the administration of his estate.

THEREFORE, I, RONALD R. DONATUCCI, Register for the Probate of Wills and Grant of Letters Testamentary and of Administration, in and for the County of Philadelphia in the Commonwealth of Pennsylvania, hereby certify that I have granted Letters of Administration  
to Zelma Brantley

who has duly qualified as Administrator of the estate of the above named decedent and has agreed to administer the estate according to law, all of which fully appear of record in the Office of the Register of Wills of Philadelphia County, Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at Philadelphia, the 5th day of August, 2019

Deputy Register

# EXHIBIT B



July 31, 2019

KLINE AND SPECTER, P.C.  
TRACY WRIGHT  
1525 LOCUST STREET, 19TH FLOOR  
PHILADELPHIA PA 19102

Re: Horace Brantley  
CIS #: 030018807  
Incident Date: 01/29/2018

Dear Tracy Wright:

Pursuant to your request for a statement of claim, the Department of Human Services (DHS), Third Party Liability (TPL), Casualty Unit, has reviewed the information you provided regarding the above-referenced incident.

It has been determined that DHS has no medical and/or cash assistance claim for this incident at this time. Please contact DHS within thirty (30) days of settlement or thirty (30) days prior to a hearing regarding damages for this incident so that DHS can determine if there is a claim at that time.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Royce L. Messersmith, Jr.".

Royce L. Messersmith  
Claims Investigation Agent  
717-772-6608  
717-772-6553 FAX

# EXHIBIT C



May 13, 2019



1352 1 MB 0.428  
\*\*\*MIXED AADC 720 R:1352 T:6 P:6 PC:3 F:1013501  
KLINE & SPECTER, PC  
1525 LOCUST ST  
PHILADELPHIA, PA 19102-3732

**\*COPY\***

For Information Only

May 13, 2019

1352 1 MB 0.428  
\*\*\*MIXED AADC 720 R:1352 T:6 P:6 PC:3 F:1013501  
HORACE A BRANTLEY  
1338 PENNINGTON RD  
PHILADELPHIA, PA 19151-2838

Beneficiary Name: BRANTLEY, HORACE A  
Medicare ID: \*\*\*\*\*4893A  
Case Identification Number: 20191 22090 01008  
Date of Incident: January 29, 2018

Subject: No Conditional Payments Identified by Medicare

Dear HORACE A BRANTLEY:

You previously received a letter notifying you of Medicare's priority right to recovery as defined under the Medicare Secondary Payer provision. To date, Medicare has not paid any Part A or Part B Fee-for-Service claims related to the date of incident referenced above.

If you believe that you have received this letter in error and that Medicare has made conditional payments, please contact us immediately. Please be advised that we are still investigating this case

4U2019127000057315





file to obtain any other outstanding Medicare conditional payments, as Medicare may pay related claims in the future; therefore, when the case does settle, please complete and return the attached "Final Settlement Detail Document" to the address below.

Should Medicare identify paid claims that are related to your case, this information will be posted under the "MyMSP" tab of the [www.mymedicare.gov](http://www.mymedicare.gov) website. The information at [www.mymedicare.gov](http://www.mymedicare.gov) will be updated regularly with any changes or newly processed claims. If you wish, you may track the medical expenses that were paid by Medicare, and if you have an attorney or other representative, provide him/her with this information. This may help you or your attorney with finalizing your settlement.

If you have any questions concerning this matter, please contact the Benefits Coordination & Recovery Center (BCRC) by phone at 1-855-798-2627 (TTY/TDD: 1-855-797-2627 for the hearing and speech impaired), in writing at the address below, or by fax to 405-869-3309. When sending correspondence, please include the Beneficiary Name along with the Medicare ID and Case Identification Number (shown above).

Sincerely,

BCRC

CC: KLINE & SPECTER, PC

Enclosures: Final Settlement Detail Document  
Payment Summary Form



## **Final Settlement Detail Document**

Beneficiary Name: BRANTLEY, HORACE A  
 Medicare ID: \*\*\*\*\*4893A  
 Date of Incident: January 29, 2018  
 Case Identification Number: 20191 22090 01008

Please supply the information outlined below to help Medicare to properly calculate the amount it is due. This information will also be used to update your records.

**Total Amount of the Settlement:**

**Total Amount of Med-Pay or PIP:**

*\*\* only if paid directly to the beneficiary  
 or the beneficiary's representative*

**Attorney Fee Amount Paid by the Beneficiary:**

**Additional Procurement Expenses Paid by the Beneficiary:**  
 (Please submit an itemized listing of these expenses)

**Date the Case Was Settled:**

**Description of Injuries:**

**Name of person who is providing this information:**

**Relationship with the Beneficiary:**

This information should be submitted to:

NGHP  
 PO BOX 138832  
 OKLAHOMA CITY, OK 73113

If you have any questions concerning this matter, please contact the Benefits Coordination & Recovery Center (BCRC) by phone at 1-855-798-2627 (TTY/TDD: 1-855-797-2627 for the hearing and speech impaired), in writing at the address below, or by fax to 405-869-3309. When sending correspondence, please include the Beneficiary Name along with the Medicare ID and Case Identification Number (shown above).

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## Payment Summary Form

Report Number:

RMCAN - 5-5

Contractor:

NGHP

Date:: 05/13/2019

Time: 06:18:06

Page 4 of 4

Beneficiary Name:

BRANTLEY, HORACE A

Case ID:

20191 22090 01008

Beneficiary Medicare ID:

\*\*\*\*\*4893A

Case Type:

L - Liability

Date of Incident: 01/29/2018

Reported Diagnosis Codes:

D499, S27309A

TOS	ICN	Line #	Processing Contractor	Provider Name/NPI#	ICD Ind	**DX Codes	**HCP/CS / DRG	From Date	To Date	Total Charges	Reimbursed Amount	Conditional Payment
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\*\*H - HCP/CS Code, D - DRG Code

\*\*\*Part-A Claim Primary Diagnosis Code is denoted in bold font

Sum of Total Charges

\$0.00

Total Reimbursed Amount

\$0.00

Total Conditional Payments

\$0.00



\*812019127000057315\*

# EXHIBIT D

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EASTERN DISTRICT OF PENNSYLVANIA

<p>ZELMA BRANTLEY, AS ADMINISTRATOR OF THE ESTATE OF HORACE ALLENSON BRANTLEY, DECEASED, AND IN HER OWN RIGHT</p> <p style="text-align: center;">PLAINTIFF</p> <p style="text-align: center;">V.</p> <p>UNITED STATES OF AMERICA</p> <p style="text-align: center;">DEFENDANT</p>	<p>CIVIL ACTION</p> <p>Civil Action No. 2:19-cv-01270-NIQA</p>
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**LEGAL COSTS AND EXPENSES OF KLINE & SPECTER, P.C.**

**EXPERTS**

<b>Total Experts</b>	<b>\$6,075.00</b>
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**MEDICAL RECORDS**

Medical Legal Reproductions, Inc.	
MRO Corporation	
Temple University Hospital	
<b>TOTAL MEDICAL RECORDS</b>	<b>\$ 370.84</b>

**DEPOSITIONS/TRANSCRIPTS**

Golkow, Inc.	\$ 750.00
<b>TOTAL DEPOSITIONS/TRANSCRIPTS</b>	<b>\$ 750.00</b>

**MISCELLANEOUS**

Filing Fee	\$ 400.00
Courier Services/Federal Express	\$ 301.14
Research	\$ 4.90
Photocopy/Videocopy/Color Copy	\$ 650.75
Postage	\$ 136.97
Samuel R. Zolten & Associates	\$1,593.00
Travel	\$ 9.28
<b>TOTAL MISCELLANEOUS</b>	<b>\$3,096.04</b>

**TOTAL KLINE & SPECTER COSTS: \$10,291.88**